

3

HAGOP T. BEDOYAN, CSB NO. 131285  
JACOB L. EATON, CSB NO. 244834  
KLEIN, DENATALE, GOLDNER,  
COOPER, ROSENLIEB & KIMBALL, LLP  
5260 N. Palm Avenue, Suite 217  
Fresno, California 93704  
Telephone: (559) 438-4374  
Facsimile: (559) 432-1847

Attorneys for Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:  
ENNIS HOMES, INC.,  
Debtor-in-Possession.

Case No. 09-10848-A-11 ✓  
Jointly Administered with  
Case No. 09-16750-A-11

Chapter 11

DC No. KDG-2  
of Case No. 09-16750

In re:  
ENNIS LAND DEVELOPMENT, INC.,  
Debtor-in-Possession.

Date: N/A  
Time: N/A  
Place: United States Bankruptcy Court  
2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California  
Judge: Honorable Whitney Rimel

**EX PARTE APPLICATION FOR ORDER MODIFYING  
ORDER AUTHORIZING SALE OF REAL PROPERTY**  
(Silver Oaks)

TO THE HONORABLE WHITNEY RIMEL, UNITED STATES BANKRUPTCY JUDGE:

Ennis Land Development, Inc. ("Debtor") hereby requests that the Court modify the  
*Order Authorizing Sale of Real Property Free and Clear of Liens (Silver Oaks)* ("the Order")  
entered in the Chapter 11 case for Ennis Land Development on August 13, 2009. A copy of the  
Order is filed concurrently herewith as Exhibit "1."

1. Debtor requests that the Court modify the Order to approve amendments to the  
Contract of Sale entered between Debtor and DR Horton Los Angeles Holding Company, Inc.

1 ("the Buyer"). The Amendments include granting a \$65,000.00 credit toward the purchase  
2 price to allow Buyer to remedy certain soil conditions that may exist ("the Adverse Soil  
3 Conditions").

4 2. Debtor and Buyer entered the Third, Fourth, and Fifth Amendments to the  
5 Contract of Sale of Silver Oaks. The Amendments were and are necessary because the Buyer  
6 became concerned about the Adverse Soil Conditions at the subject property ("Silver Oaks")  
7 after it performed certain soil composition testing as provided for in the Contract of Sale.  
8 Debtor and Buyer are continuing the testing of the soil composition to determine whether the  
9 Adverse Soil Conditions exist and the extent of the problem. The Amendments amend the  
10 Contract of Sale as follows:

- 11 a. The Third Amendment was entered into on August 28, 2009 and extended the  
12 feasibility period and closing date to give the parties time to resolve the issues  
13 raised by the Adverse Soil Conditions. The Third Amendment is included in the  
14 Exhibits as Exhibit "2".
- 15 b. The Fourth Amendment was entered into on September 11, 2009 and extended  
16 the feasibility period and closing date further to September 22, 2009. The  
17 Fourth Amendment is included in the Exhibits as Exhibit "3".
- 18 c. The Fifth Amendment provides for a \$65,000.00 credit to Buyer to compensate  
19 Buyer for the remedial expenses incurred to correct any Adverse Soil  
20 Conditions. However, if the actual cost of remediation is less than \$65,000.00,  
21 Buyer will pay to Debtor the difference between the actual costs incurred, if any,  
22 and \$65,000.00 ("the Difference Payment") within 15 days of the cure of the  
23 soil conditions. The Fifth Amendment is included in the Exhibits as Exhibit  
24 "4".

25 3. Wells Fargo Bank holds the first deed of trust against Silver Oaks. Wells Fargo  
26 Bank has agreed to accept no less than \$2,090,000.00 in exchange for a release of its deed of  
27 trust against Silver Oaks. Debtor will receive no more than \$45,000.00 from the proceeds  
28 received from the sale of Silver Oaks to be used in the ordinary course of business subject to

1 the Orders Authorizing Use of Cash Collateral entered by the Court. Debtor agrees to pay one-  
2 half of the Difference Payment, if any is received from Buyer, to Wells Fargo Bank. Also,  
3 Debtor will pay one-half of any damages collected from a third-party to Wells Fargo Bank if  
4 Debtor collects damages from a third-party for illegal dumping that caused the Adverse Soil  
5 Conditions at Silver Oaks.

6 4. Debtor seeks to have the Order modified to conform with the Third, Fourth, and  
7 Fifth Amendments to the Contract of Sale and the agreement between Wells Fargo Bank and  
8 Debtor.

9 5. All other aspects of the Order would remain unchanged.

10 WHEREFORE Debtor prays that:

11 1. The *Ex Parte Application to Modify Order Authorizing Sale of Real Property*  
12 (*Silver Oaks*) be approved;

13 2. The Third, Fourth, and Fifth Amendments to the Contract of Sale between  
14 Debtor and Buyer be approved;

15 3. The Order be modified to provided a \$65,000.00 credit toward the purchase  
16 price to Buyer. The credit shall be used to cure the Adverse Soil Conditions, to the extent  
17 necessary. Buyer shall pay the difference between the actual costs to cure the Adverse Soil  
18 Conditions incurred and \$65,000.00 to Debtor within 15 days of completion of the cure; and

19 4. That the agreement between Wells Fargo Bank and Debtor as to the  
20 disbursement of the proceeds received from the sale of Silver Oaks as described herein be  
21 approved.

22  
23 Date: September 24, 2009

24 KLEIN, DeNATALE, GOLDNER,  
25 COOPER, ROSENLIB & KIMBALL, LLP

26 By /s/ Jacob L. Eaton  
27 JACOB L. EATON  
28 Attorneys for Debtor